

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Nos. 3:08-CR-151,
)	3:08-MJ-2082,
)	3:08-MJ-2083,
MIGUEL ANGEL BELMARES,)	3:08-MJ-2084,
)	3:08-MJ-2085
Defendant, and)	
)	
ROLANDO GAMEZ-RODRIGUEZ,)	(VARLAN/SHIRLEY)
JUAN CERVANTES-BERNAL,)	
GABRIEL MANZANILLA-CHULIM, and)	
JOSE ALEXANDER AYALA,)	
)	
Material Witnesses.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This matter came before the undersigned on November 5, 2008, for a hearing on the United States' Motion for Rule 15 Deposition [Doc. 7] filed in United States v. Miguel Angel Belmares (case no. 3:08-CR-151) pursuant to 18 U.S.C. section 3144. Assistant United States Attorney F.M. Hamilton represented the government. Attorney Paula Voss was present on behalf of Defendant Belmares, who was also present and participated with the aid of an interpreter. Attorneys Charles I. Poole, Steven G. Shope, Ruth Thompson Ellis, and Theodore R. Kern represented the material witnesses: Rolando Gamez-Rodriguez ("Mr. Gamez"), Juan Cervantes-Bernal ("Mr. Cervantes"), Gabriel Manzanilla-Chulim ("Mr. Manzanilla"), and Jose

Alexander Ayala (“Mr. Ayala”) respectively. The material witnesses, who are in the custody of the Attorney General as maintained by the United States Marshal Service pursuant to the orders of this Court, were not in attendance.

At the hearing, the Court granted the United States’ request to preserve the testimony of the material witnesses by deposition pursuant to Rule 15, Fed. R. Crim. P. The parties confirmed that the depositions could proceed on November 19, 2008, the date previously set aside for depositions should they be granted. The parties planned to depose Mr. Gamez and Mr. Manzanilla in the morning, and Mr. Cervantes and Mr. Ayala in the afternoon. The Court also set a hearing for November 21, 2008, at 1:30 p.m., to determine the custodial/release status of the material witnesses. Attorney Voss informed the Court that Defendant Belmares and the government were still attempting to negotiate a plea agreement and that she would inform the Court if they were successful in that endeavor. The Court stated that absent the actual entry of a change of plea, it had no plans to cancel the depositions of the material witnesses.

Later that morning, Defendant Belmares appeared before District Court Judge Thomas A. Varlan and entered a change of plea [Doc. 19]. The plea agreement [Doc. 20] has been sealed but for reasons stated therein AUSA Hamilton and Attorney Voss confirmed that the Rule 15 depositions were no longer needed.

Because Defendant Belmares has entered into a plea agreement resolving the issues as to the material witnesses and to what they would have testified, the Court finds, and both the government and Defendant Belmares agree, that further detention of the material witnesses to secure their testimony at Belmares’ trial is no longer “reasonable” or “necessary to prevent the failure of justice.” See 18 U.S.C. § 3144. Accordingly, upon reconsideration in light of the intervening

events, the United States' Motion for Rule 15 Deposition [case no. 3:08-CR-151, **Doc. 7**] is **DENIED**. Moreover, the material witnesses Rolando Gamez-Rodriguez [case no. 3:08-MJ-2082], Juan Cervantes-Bernal [case no. 3:08-MJ-2083], Gabriel Manzanilla-Chulim [case no. 3:08-MJ-2084], and Jose Alexander Ayala [case no. 3:08-MJ-2085] are **RELEASED** from the custody of the Attorney General and to their BICE detainees. The depositions scheduled for November 19, 2008, and the hearing set for November 21, 2008, at 1:30 p.m., relating to these matters are **CANCELLED**. The Court **DIRECTS** the attorneys for the material witnesses to communicate the contents of this order to their clients and, to the extent that they do not speak English, to communicate the contents through an interpreter or otherwise so that they understand what the Court has ordered and what is to happen to them.

It is therefore **ORDERED** that:

- (1) Upon reconsideration, the United States' Motion for Rule 15 Deposition [case no. 3:08-CR-151, **Doc. 7**] is **DENIED**;
- (2) The material witnesses listed herein are **RELEASED** from the custody of the Attorney General and to BICE detainees;
- (3) The depositions scheduled for November 19, 2008, and the hearing set for November 21, 2008, at 1:30 p.m., relating to these matters are **CANCELLED**;
- (4) The Clerk of the Court shall provide copies of this order to the United States Marshal's Service; and
- (5) Counsel for the material witnesses are **DIRECTED** to explain the contents of this order to their clients as soon as possible.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge